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October 30, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen,

We write regarding the implementation of President Biden's "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" Executive Order (E.O. 14105) issued on August 9, 2023. President Biden has taken a critical and unprecedented first step on the vital issue of outbound investment into the People's Republic of China (PRC). As you formulate guidance on the implementation, we make the following recommendations that will ensure that the E.O. addresses as effectively as possible the serious national security issues that we face related to these critical technologies.

First, we recommend that the E.O. be implemented urgently. As Treasury deliberates on the definitions and scope to be issued in these guidelines, the Chinese Communist Party (CCP) is developing advanced technologies, with the help of American capital and know-how. We encourage you to issue rules and technical guidance as soon as possible to begin curtailing the flow of U.S. capital to these sectors and to ensure that American investors and businesses have clarity on which investments will be subject to restrictions going forward.

Second, we recommend that Treasury adopts a broad definition of covered technology sectors that reflects the CCP's expansive concept of national security. The CCP blurs the line between national security and normal commercial matters, including through the CCP's Military-Civil Fusion (MCF) strategy, which intentionally eliminates barriers between the CCP's civilian research and commercial sectors and the People's Liberation Army (PLA).¹ As a result, American investment in advanced technology has been consistently co-opted by the PLA, and we should expect that the CCP will seek to evade restrictions that are narrowly defined. While

¹ U.S. Department of State, "Military-Civil Fusion and the People's Republic of China," <https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf>.

avoiding unnecessary restrictions on investment is important in principle, we should be under no illusion that a narrowly scoped E.O. will adequately protect our national security interests.

We therefore encourage a broad definition of the three sectors of national security technologies and products identified in the E.O.—semiconductors and microelectronics, quantum information technologies, and certain artificial intelligence systems. The prohibitions and notification requirements will have maximum value if they are not limited to narrow subcategories of technologies, and we discourage the creation of “excepted transactions” that would dilute the intent and effectiveness of the E.O. We also encourage Treasury to pursue notification requirements for all subcategories of the three technology sectors that are not subject to prohibitions. Such notifications would allow policymakers to have accurate information on American investments in these industries. Finally, to ensure compliance, we request that you work with relevant authorities to pursue the maximum allowed penalties for violations.

Third, we recommend that you bolster coordination with our allies and partners as Treasury moves forward with the implementation of this E.O. While restricting American outbound investment is an important and significant step to safeguard our national security interests, cooperation with our allies and partners will more effectively restrict the PLA’s modernization efforts. Without successful coordination, the PLA would still have access to the foreign capital and expertise it needs to grow its capabilities in technologies and products that threaten our values and security interests.

Finally, we believe restrictions on active investment alone are an important first step, but there is more work to be done. The majority of U.S. investment into concerning companies in the PRC comes through public markets, including mutual funds, exchange-traded funds, and index funds. We should address those more passive flows of capital as well. We also should not allow American capital to enable the CCP’s techno-totalitarian surveillance state and genocide and forced labor in the Xinjiang Uyghur Autonomous Region (XUAR). The E.O. lays the foundation for Congress to build additional restrictions that protect our national security and uphold our values.

Thank you for your attention to this matter. We look forward to working with you to ensure the successful implementation of the E.O.

Sincerely,



Mike Gallagher
Chairman



Raja Krishnamoorthi
Ranking Member